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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN BLAKE DAVIS, JR.,

Defendant and Appellant.

F063430

(Super. Ct. No. BF136302A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Gabriel C. Vivas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J. and Kane, J.

A jury convicted Adrian Blake Davis, Jr., of assault with a deadly weapon, in violation of Penal Code section 245, subdivision (a)(1).¹ Davis argues the trial court erroneously denied his *Pitchess*² motion, i.e., a motion to discover confidential police personnel records. We conclude that even if we were to assume the trial court erred in denying Davis's motion, there is no possibility that he suffered any prejudice and therefore will affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Information

The information contained a single count alleging Davis violated section 245, subdivision (a)(1). In addition, the information charged that in committing the assault Davis inflicted great bodily injury within the meaning of section 12022.7.

Testimony

Melissa Zena Parks had known and been friends with Davis since they were in high school. On the night of the incident, Parks and Ariel Ware picked up Davis and went to a party. While at the party, Parks and Davis had an argument. Davis left the party on foot. Parks and Ware left the party in their vehicle without Davis and went to the apartment Davis shared with Alec Deoilers.

Davis arrived at the apartment approximately 20 minutes after Ware and Parks. Ware got into an argument with Davis. Davis asked Ware and Parks to leave. Parks had seen Ware with a metal cross earlier in the evening and later she saw blood on Davis's face. Ware was holding the cross.

Davis left the room and came back with a hammer. Davis was walking up to Ware so Parks positioned herself between the two because she did not think Davis would hit her. Davis was angry and was yelling at Ware. Parks told Davis to calm down.

¹All statutory references are to the Penal Code unless otherwise stated.

²*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

Davis swung the hammer, hitting Parks in the head. There was a loud sound when the hammer hit Parks's head, although she did not lose consciousness. There was a lot of blood on the floor of the apartment.

Parks left the apartment and went to the hospital. The hammer blow left a gash on her head that exposed her skull. She received three layers of stitches to close the wound. At the time of trial, Parks had a light-colored scar as a result of the injury. After the incident, Davis called to apologize to Parks for the incident.

Ware was friends with Parks. She was with Parks on the night in question when they went to Deoilers's apartment. Ware had known Deoilers since high school and was friends with him. Davis arrived about 25 minutes after Ware and Parks arrived at the apartment. Davis was angry and argued with Parks. Ware began arguing with Davis.

Davis went into the garage and retrieved a hammer. Davis hit Parks with the hammer. Ware heard a "pop" sound, and Parks bent over. Ware was covered in blood. Parks had quite a bit of blood on her and was bleeding profusely. Ware hit Davis with a metal object (the metal cross) she had found on the floor of the apartment. Ware hit Davis after Davis had hit Parks. Davis ran out the sliding glass door. He still had the hammer in his hand.

Deoilers testified that Davis was his roommate on the date of the incident. Parks and Ware were at his apartment that night. Deoilers did not see them because he was in his room with his girlfriend. He did not see anything that happened that night. Deoilers could not remember giving a statement to Bakersfield Police Officer Jason Felgenhauer, and he denied the statements attributed to him in the police report.

Felgenhauer observed Parks at the hospital after the incident. He described the injury as about one-inch square and one-quarter-inch deep. He also observed a very small crack in her skull.

After leaving the hospital, Felgenhauer went to Deoilers's apartment. The gentleman who answered the door identified himself as Alec Deoilers. Felgenhauer

identified Deoilers as the witness who had testified just prior to his testimony. Deoilers told Felgenhauer that Ware and Parks arrived at his apartment about 1:30 a.m. and were talking about an argument they had had with Davis earlier that night. Davis arrived about 25 minutes later. Davis was very angry when he arrived. An argument began and got out of hand very quickly. Deoilers was on the top of the staircase and had an unobstructed view of the argument. Deoilers invited Ware and Parks upstairs to separate them from Davis and hopefully end the argument. Davis lunged at Ware and Parks with a hammer and struck Parks on the left side of the head. Davis ran out the back door of the residence with the hammer in his hand.

Verdict and Sentencing

The jury convicted Davis of assault with a deadly weapon. The jury found the allegation that Davis personally inflicted great bodily injury not true.

The trial court sentenced Davis to the midterm of three years in prison.

DISCUSSION

Prior to trial Davis made a motion to discover Officer Felgenhauer's personnel records pursuant to Evidence Code sections 1043 and 1045. The motion alleged that Felgenhauer stated in his report that Deoilers made a statement to him describing the incident. Davis alleged he was "informed and believed" Deoilers did not make a statement to Felgenhauer. Accordingly, Davis sought the personnel records to see if there were other complaints that Felgenhauer had fabricated evidence. The trial court denied the motion finding there was not sufficient cause to permit the discovery of the records.

Personnel records are statutorily defined as confidential and are subject to discovery pursuant only to the procedures set forth in the Penal Code. (§§ 832.7, 832.8; *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 52.) "Evidence Codes sections 1043 and 1045 ... set forth the procedures for discovery. A party seeking disclosure must file a written motion, with notice to the governmental agency having custody of the

records sought. The motion must describe the type of records or information sought and provide affidavits showing good cause for the disclosure, setting forth its materiality to the pending litigation and stating on reasonable belief that the identified agency possesses the records or information. [Citation.] The trial court must then make an in camera examination of the information produced by the agency and exclude from disclosure certain categories of information, including complaints more than five years old, the conclusions of any officer investigating a complaint, and facts that are so remote as to make disclosure of little or no practical benefit. [Citation.] [¶] The court may make any order that justice requires to protect the officer or agency from unnecessary annoyance, embarrassment, or oppression, and must order that any records disclosed shall not be used for any purpose other than a court proceeding pursuant to applicable law. [Citations.] The statutory scheme carefully balances two directly conflicting interests: the peace officer's just claim to confidentiality, and the criminal defendant's equally compelling interest in all information pertinent to the defense. [Citation.]” (*City of San Jose*, at pp. 52-53.)

The trial court is granted wide discretion when ruling on motions to discover police personnel records. (*People v. Memro* (1995) 11 Cal.4th 786, 832, overruled on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610, 642.) Good cause generally can be defined as a sufficient connection between the records sought and the issue or issues in the case to make the records relevant. (*Ibid.*) The defendant seeking an officer's personnel records must demonstrate “the requested information will facilitate the ascertainment of the facts and a fair trial. [Citation.] The requisite showing may be satisfied by general allegations which establish some cause for discovery other than ‘a mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime.’ [Citations.]” (*Pitchess, supra*, 11 Cal.3d at pp. 536-537.)

We are not convinced the trial court abused its discretion in denying Davis's motion. Davis was required to establish there was good cause for the discovery, and "a showing of good cause requires a defendant seeking *Pitchess* discovery to establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021-1022 (*Warrick*).

The only information Felgenhauer had for the trial court was his impeachment of Deoilers, who denied observing the incident. Felgenhauer testified that Deoilers told him that he (Deoilers) had observed the incident and described what Deoilers stated he had seen.

Davis failed to establish a link between his defense and Felgenhauer's testimony. The statement Deoilers gave to Felgenhauer essentially was consistent with that provided by Parks and Ware. Moreover, Felgenhauer was not a percipient witness to the incident and had no first-hand testimony to offer about the attack. The fact that Felgenhauer was not a percipient witness distinguishes this case from the cases on which Davis relies -- *Warrick, supra*, 35 Cal.4th 1011 (defendant challenged officers' claim that they observed defendant drop items identified as cocaine), *Brant v. Superior Court* (2003) 108 Cal.App.4th 100 (defendant challenged the officers' account of the detention, search, and manner confession was obtained), and *People v. Husted* (1999) 74 Cal.App.4th 410 (defendant challenged officer's description of events that led to felony evasion of arrest charge).

Finally, it is unclear to what defense Davis's motion was relevant. Davis did not assert he was not the one who hit Parks with the hammer. He was identified by Parks and Ware, who both knew him before the incident. Nor was there any question that Parks was injured. Therefore, neither identity of the assailant nor the extent of the injury was at issue.

Instead, Davis claimed he acted in self-defense. Parks and Ware both testified to facts that identified Davis as the aggressor and negated the self-defense as a possible defense. Deoilers's statement was cumulative to the testimony of Parks and Ware as it was completely consistent to their testimony. Most importantly, Deoilers did not tell Felgenhauer whether Davis hit Parks before or after he was hit with the metal cross, which was the sole basis for the self-defense argument. Accordingly, it does not appear the trial court abused its discretion in denying the motion because Deoilers's statement was not critical to the prosecution's case or Davis's defense.

We need not rest our decision on this point, however, because even if the trial court erred, a point we are not conceding, there is no possibility under any standard of review that Davis suffered any prejudice. (*People v. Samuels* (2005) 36 Cal.4th 96, 110.) Even had Felgenhauer not testified, the *undisputed testimony* was that Davis left a verbal confrontation to retrieve a hammer from the garage and then used that hammer to strike Parks. Davis's counsel admitted Davis struck Parks, but advanced an improbable theory that he acted in self-defense. Given the overwhelming evidence of Davis's guilt, trial counsel made the only argument available to her. But the improbability of the argument left it no chance of success.³ The lack of prejudice caused by Deoilers's statement also is confirmed by the fact that neither attorney mentioned the statement in closing argument. Under these circumstances, Davis cannot establish that any error that may have occurred at trial caused him any possible prejudice.

DISPOSITION

The judgment is affirmed.

³The evidence was unclear whether Davis struck Parks either before or after he was hit with the metal cross. Under either circumstance, Davis was not acting in self-defense when he hit Parks, especially since Ware, not Parks, struck him with the cross.